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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No.: 20010-1

12 **ROCKWELL SPENCE WESTLAKE**
13 **3073 C Street**
14 **San Diego, CA 92102**

A C C U S A T I O N

15 **Registered Nurse License No. 375179**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about August 31, 1984, the Board of Registered Nursing issued Registered
24 Nurse License Number 375179 to Rockwell Spence Westlake (Respondent). The Registered
25 Nurse License was in full force and effect at all times relevant to the charges brought herein and
26 will expire on December 31, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

1 (b) Use any controlled substance as defined in Division 10 (commencing with
2 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
3 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
4 dangerous or injurious to himself or herself, any other person, or the public or to the
5 extent that such use impairs his or her ability to conduct with safety to the public the
6 practice authorized by his or her license.

7 (c) Be convicted of a criminal offense involving the prescription, consumption,
8 or self-administration of any of the substances described in subdivisions (a) and (b) of
9 this section, or the possession of, or falsification of a record pertaining to, the
10 substances described in subdivision (a) of this section, in which event the record of
11 the conviction is conclusive evidence thereof.

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13 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
14 revoke a license on the ground that the licensee has been convicted of a crime substantially
15 related to the qualifications, functions, or duties of the business or profession for which the
16 license was issued.

17 9. Section 492 of the Code states:

18 Notwithstanding any other provision of law, successful completion of any
19 diversion program under the Penal Code, or successful completion of an alcohol and
20 drug problem assessment program under Article 5 (commencing with section
21 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
22 agency established under Division 2 ([Healing Arts] commencing with Section 500)
23 of this code, or any initiative act referred to in that division, from taking disciplinary
24 action against a licensee or from denying a license for professional misconduct,
25 notwithstanding that evidence of that misconduct may be recorded in a record
26 pertaining to an arrest.

27 This section shall not be construed to apply to any drug diversion program
28 operated by any agency established under Division 2 (commencing with Section 500)
of this code, or any initiative act referred to in that division.

10. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

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1 11. Section 4022 of the Code states

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe
3 for self-use in humans or animals, and includes the following:

4 (a) Any drug that bears the legend: "Caution: federal law prohibits
5 dispensing without prescription," "Rx only," or words of similar import.

6 (b) Any device that bears the statement: "Caution: federal law restricts
7 this device to sale by or on the order of a _____," "Rx only," or words of
8 similar import, the blank to be filled in with the designation of the practitioner
9 licensed to use or order use of the device.

10 (c) Any other drug or device that by federal or state law can be lawfully
11 dispensed only on prescription or furnished pursuant to Section 4006.

12 REGULATORY PROVISIONS

13 12. California Code of Regulations, title 16, section 1444, states:

14 A conviction or act shall be considered to be substantially related to the
15 qualifications, functions or duties of a registered nurse if to a substantial degree it
16 evidences the present or potential unfitness of a registered nurse to practice in a
17 manner consistent with the public health, safety, or welfare. Such convictions or acts
18 shall include but not be limited to the following:

19 (a) Assaultive or abusive conduct including, but not limited to, those violations
20 listed in subdivision (d) of Penal Code Section 11160.

21 (b) Failure to comply with any mandatory reporting requirements.

22 (c) Theft, dishonesty, fraud, or deceit.

23 (d) Any conviction or act subject to an order of registration pursuant to Section
24 290 of the Penal Code.

25 13. California Code of Regulations, title 16, section 1445, states:

26

27 (b) When considering the suspension or revocation of a license on the grounds
28 that a registered nurse has been convicted of a crime, the board, in evaluating the
rehabilitation of such person and his/her eligibility for a license will consider the
following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or
offense(s).

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1 (4) Whether the licensee has complied with any terms of parole,
probation, restitution or any other sanctions lawfully imposed against the licensee.

2 (5) If applicable, evidence of expungement proceedings pursuant to
3 Section 1203.4 of the Penal Code.

4 (6) Evidence, if any, of rehabilitation submitted by the licensee.

5 COST RECOVERY

6 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
7 administrative law judge to direct a licensee found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 FIRST CAUSE FOR DISCIPLINE

11 (April 18, 2007 Criminal Conviction for Possession of 12 Controlled Substances for Sale on January 30, 2007)

13 15. Respondent has subjected his license to disciplinary action under sections 490 and
14 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
15 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
16 follows:

17 a. On or about April 18, 2007, in a criminal proceeding entitled *People of*
18 *the State of California v. Rockwell Spence Westlake*, in San Diego County Superior Court, case
19 number CD204479, Respondent was convicted on his plea of guilty of violating Health and
20 Safety Code section 11378, possession of controlled substances for sale, a felony.

21 b. As a result of the conviction, on or about April 18, 2007, Respondent was
22 sentenced to three years formal probation, 180 days in the custody of the sheriff, with credit for
23 two days, 10 days Public Work Service, and payment of fees, fines, and restitution in the amount
24 of \$880. Respondent was ordered to register as a controlled substance offender and to waive
25 Fourth Amendment protection.

26 c. The facts that led to the conviction were that on or about the afternoon of
27 January 30, 2007, officers of the San Diego Police Department served a search warrant at
28 Respondent's residence following complaints of narcotics activity. Respondent rented rooms to

1 various individuals, including "Rodney." Respondent was not present at the residence at the time
2 of initial entry. Two males at the residence were found to have outstanding warrants and were
3 arrested. Respondent arrived at his residence as the officers were conducting their search; he was
4 arrested, handcuffed and led into the residence.¹ Among items found in Respondent's bedroom
5 were numerous shot glasses with methamphetamine residue, a glass pipe with methamphetamine
6 residue, loose marijuana and a triple beam scale on Respondent's bed, and a baggie containing
7 methamphetamine in Respondent's nightstand. Throughout the residence there were additional
8 controlled substances, packaging materials, pay/owe sheets, and various denominations of U.S.
9 currency. Respondent admitted to the officers that he uses and sells methamphetamine and
10 marijuana. He purchases methamphetamine from Rodney and resells it. He uses the shot glasses
11 to mix methamphetamine with water, then injects the methamphetamine intravenously.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Possession of a Controlled Substance on January 30, 2007)**

14 16. Respondent has subjected his license to disciplinary action under section 2762,
15 subdivision (a) of the Code in that on or about January 30, 2007, as described in paragraph 15,
16 above, Respondent possessed methamphetamine. Methamphetamine is a Schedule II controlled
17 substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is a
18 dangerous drug pursuant to Business and Professions Code section 4022. Such unprofessional
19 conduct is substantially related to the qualifications, functions, and duties of a registered nurse.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – Possession & Under the Influence** 22 **of a Controlled Substance on March 26, 2009)**

23 17. Respondent has subjected his license to disciplinary action under section 2762,
24 subdivisions (a) and (b) of the Code in that on or about March 26, 2009, Respondent was found in
25 possession of methamphetamine and under the influence of methamphetamine. The
26 circumstances are as follows:

27 ¹ A police department records check confirmed that Respondent had been arrested for
28 possession of methamphetamine and posted bail the night before (January 29, 2007).

1 a. On or about March 26, 2009, officers from the San Diego Police
2 Department were conducting a probation/Fourth Amendment waiver search of Respondent's
3 residence. Upon entry into the residence, the officers encountered two males; Respondent was
4 not present. The officers searched Respondent's bedroom and found two syringes containing a
5 red liquid. In a linen closet across from Respondent's bedroom the officers located two glass
6 pipes, a used syringe, and a glass bowl containing methamphetamine. There was also a small
7 ziplock plastic bag containing methamphetamine residue inside a trashcan right outside of
8 Respondent's bedroom. Respondent arrived home and was arrested. He stated to an officer that
9 he gave his probation officer a dirty test three weeks prior and had to start probation over. The
10 officer noted that Respondent's pulse rate was elevated (104 BPM) and his eyes showed
11 significant dilation. Respondent admitted that he and two other people had smoked
12 methamphetamine around midnight; he attempted to inject it around the same time.

13 b. As a result of the arrest, on or about June 4, 2009, in a proceeding entitled
14 *People of the State of California v. Rockwell Spence Westlake*, in San Diego County Superior
15 Court, case number SCD219847, Respondent pled guilty to possessing a useable amount of
16 methamphetamine, in violation of Health and Safety Code section 11377, subdivision (a).

17 c. As a result of the guilty plea, on or about June 4, 2009, the court granted
18 formal probation pursuant to Penal Code section 1210. Sentence was suspended for a period of
19 three years on the following terms and conditions: Respondent is required to participate in and
20 complete a drug treatment program, attend NA, AA, or other self-help group, totally abstain from
21 alcohol and illegal drugs, submit to random biological drug screens, and to obey all laws.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 375179, issued to
5 Rockwell Spence Westlake;

6 2. Ordering Rockwell Spence Westlake to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: 7/2/09
13 *for* *Stacie Berum*
14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

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